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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85707925
Applicant	J.W. Pepper & Son, Inc.
Applied for Mark	MY SCORE
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Applicant: J.W. Pepper & Son, Inc.
Serial No.: 85/707,925
Trademark: MY SCORE
Filing Date: August 20, 2012
Class: 35
To: Hon. Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

REPLY BRIEF OF APPLICANT IN SUPPORT OF REGISTRATION

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ARGUMENT

"SCORE" Is Not Descriptive of Applicant's Services

The Examining Attorney argues in her Appeal Brief that the term "SCORE" in Applicant's mark, MY SCORE, should be disclaimed because it allegedly is merely descriptive of Applicant's services. The Examining Attorney arrives at this conclusion by means of incorrect or misleading statements regarding the distinction between descriptive and suggestive terms, as well as misleading factual statements regarding Applicant's and third parties' use of the term "SCORE."

According to the TMEP, "[s]uggestive marks are those that, when applied to the goods or services at issue, require imagination, thought, or perception to reach a conclusion as to the nature of those goods or services. Thus, a suggestive term differs from a descriptive term, which immediately tells something about the goods or services. See *In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985) (SPEEDI BAKE for frozen dough found to fall within the category of suggestive marks because it only vaguely suggests a desirable characteristic of frozen dough, namely, that it quickly and easily may be baked into bread); *In re The Noble Co.*, 225 USPQ 749 (TTAB 1985) (NOBURST for liquid antifreeze and rust inhibitor for hot-water-heating systems found to suggest a desired result of using the product rather than immediately informing the purchasing public of a

characteristic, feature, function, or attribute); *In re Pennwalt Corp.*, 173 USPQ 317 (TTAB 1972) (DRI-FOOT held suggestive of anti-perspirant deodorant for feet in part because, in the singular, it is not the usual or normal manner in which the purpose of an anti-perspirant and deodorant for the feet would be described)." TMEP § 1209.01(a). Moreover, "[t]o be refused registration on the Principal Register under §2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), a mark must be merely descriptive or deceptively misdescriptive of the goods or services to which it relates." TMEP § 1209.01(b).

The Examining Attorney skated around the TMEP by twisting Applicant's words in its Appeal Brief, when in fact the Examining Attorney completely missed the distinction made by Applicant between "sheet music" and a "score" of a musical composition. "Sheet music," which is the type of product sold by Applicant through its MY SCORE services, is simply a record of, or a means to perform, a given piece of music, whether a simple scale or a song. See attached Merriam-Webster definition for "sheet music." In contrast, a "score" is a copy of a musical composition as a whole, not just the instruction manual that explains one instrumentalist or singer how to play a song. See attached Merriam-Webster definition for "score" (defining "score" as "In music, the parts of all the instruments or singers of an ensemble notated with simultaneous sounds aligned

vertically. . . ."). Any consumer of Applicant's services would know that a musical composition is more than mere "sheet music."

As articulated in Applicant's Appeal Brief, this distinction between a "score" and "sheet music" is best understood by observing the difference in usage of such terminology. In conversation, a customer would commonly say, "I plan to purchase the "sheet music" for "My Heart Will Go On" by Celine Dion. In contrast, a customer would never make the statement, "I plan to purchase the "score" for "My Heart Will Go On" by Celine Dion. This comparison emphasizes the suggestive nature of Applicant's mark in connection with its services. Applicant's customers would never intend to purchase a "score"; this term merely suggests the nature of Applicant's services.

As for the Examining Attorney's Internet evidence cited in her Final action dated July 15, 2013 and excerpted in her Appeal Brief, Applicant notes that five incorrect uses of the term "score" do not indicate that the term is descriptive in the context of Applicant's mark. As explained above, these websites offer sheet music, not scores. This evidence is insufficient to prove that the term "score" is merely descriptive of Applicant's services.

CONCLUSION

For the foregoing reasons, Applicant, J.W. Pepper & Son, Inc., respectfully requests that the Trademark Trial and Appeal

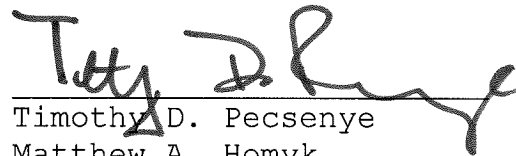
Board reverse the Examining Attorney's final refusal to register its trademark without disclaimer.

Respectfully submitted,

J.W. PEPPER & SON, INC.

Dated: July 7, 2014

By:



Timothy D. Pecsénye

Matthew A. Homyk

BLANK ROME LLP

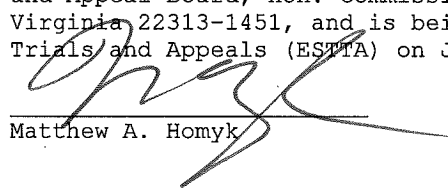
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Matthew A. Homyk

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sheet music



Quiz

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sheet music

sheet music *noun*

: music printed on sheets of paper that are not bound together

Full Definition of SHEET MUSIC

: music printed on large unbound sheets of paper

▢ See sheet music defined for English-language learners »
See sheet music defined for kids »

First Known Use of SHEET MUSIC

1852

Browse

Next Word in the Dictionary: sheet pavement

Previous Word in the Dictionary: sheet mold

All Words Near: sheet music

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Quiz

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Take Our 10-Question Quiz**score**

28 ENTRIES FOUND:

score
score off
advanced score

Save

Popularity

¹**score** *noun* \ˈskôr\

: the number of points, goals, runs, etc., that each player or team has in a game or contest

: the number of points that someone gets for correct answers on a test, exam, etc.

: a document showing all the notes of a piece of music

plural **scores****Full Definition of SCORE****1 or plural score****a** : TWENTY**b** : a group of 20 things —often used in combination with a cardinal number <fourscore>**c** : an indefinitely large number**2 a** : a line (as a scratch or incision) made with or as if with a sharp instrument**b (1)** : a mark used as a starting point or goal **(2)** : a mark used for keeping account**3 a** : an account or reckoning originally kept by making marks on a tally**b** : amount due : INDEBTEDNESS**4** : GRUDGE <a score to settle>**5 a** : REASON, GROUND <was accepted on the score of high academic achievement>**b** : SUBJECT, TOPIC <has nothing to say on that score>**6 a** : the copy of a musical composition in written or printed notation**b** : a musical composition; *specifically* : the music for a movie or theatrical production**c** : a complete description of a dance composition in choreographic notation**MORE QUIZZES****Name That Thing**Take our visual vocab quiz
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Word of the Day, and More
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7 a : a number that expresses accomplishment (as in a game or test) or excellence (as in quality) either absolutely in points gained or by comparison to a standard

b : an act (as a goal, run, or touchdown) in any of various games or contests that gains points

8 : success in obtaining something (as money or drugs) especially through illegal or irregular means

9 : the stark inescapable facts of a situation <knows the *score*>

🔍 See score defined for English-language learners »
See score defined for kids »

Examples of SCORE

students with low test *scores*

The film's *score* is by a famous composer.

Origin of SCORE

Middle English *scor*, from Old Norse *skor* notch, tally, twenty; akin to Old English *scieran* to cut — more at *SHEAR*

First Known Use: 14th century

Related to SCORE

Synonyms

down [*chiefly British*], grievance, resentment, grudge

Related Words

condemnation; offense (*or* offence), umbrage; complaint; dudgeon, huff, peeve, pique; despite, hatefulness, malevolence, malice, maliciousness, meanness, nastiness, spite, spitefulness, spleen, venom, viciousness; animosity, antagonism, antipathy, bitterness, enmity, hostility, rancor

Near Antonyms

quietus, quittance, repayment; asset

more

Other Number-Related Terms

jubilee, myriad, quarantine, twain

Rhymes with SCORE

boar, Boer, bore, chore, cor, core, corps, crore, door, floor, for, fore, four, frore, gore, Gore, hoar, lore, mor, more, nor, o'er, oar, ...

[+] more

²SCORE *verb*

: to get points, goals, runs, etc., in a game or contest

: to be worth (a particular number of points) in a game or contest

: to officially record the number of points, goals, runs, etc., that each player or team gets in a game or contest

scored scor-ing

Full Definition of SCORE

transitive verb

- 1 a :** to keep a record or account of by or as if by notches on
a tally : RECORD
- b :** to enter in a record
- c :** to mark with significant lines or notches (as in keeping account)
- 2 :** to mark with lines, grooves, scratches, or notches
- 3 :** BERATE, SCOLD; *also* : DENOUNCE
- 4 a (1) :** to make (a score) in a game or contest <*scored* a touchdown> <*scored* three points> (2) : to enable (a base runner) to make a score (3) : to have as a value in a game or contest : COUNT <a touchdown *scores* six points>
- b (1) :** ACHIEVE, ATTAIN <*scored* a dazzling success> (2) : ACQUIRE <help a traveler *score* local drugs — Poitor Koper> (3) : WIN 1 <*scored* free tickets over the radio>
- 5 :** to determine the merit of : GRADE
- 6 a :** to write or arrange (music) for a specific performance medium
- b :** to make an orchestration of
- c :** to compose a score for (a movie)

intransitive verb

- 1 :** to keep score in a game or contest
- 2 :** to make a score in a game or contest
- 3 a :** to gain or have the advantage
- b :** to be successful: as (1) : to succeed in having sexual intercourse (2) : to manage to obtain illicit drugs
- c :** ³RATE

— **scor·er** *noun*— **score points**

: to gain favor, status, or advantage

☞ See score defined for English-language learners »

Examples of SCOREShe *scored* twice in the game.Each correct answer *scores* two points.In American football, a touchdown *scores* six points.Who's going to *score* the game?Judges will *score* the performances based on their artistic and technical features.Which judges are *scoring* tonight?**First Known Use of SCORE**

14th century

Related to SCORE

Synonyms

groove, scribe, seam

Related Words

abrade, file, graze, mill, rasp, scarify, scratch; bevel, chamfer, flute

Near Antonyms

lose

more

score *noun* (*Concise Encyclopedia*)

In music, the parts of all the instruments or singers of an ensemble notated with simultaneous sounds aligned vertically, on a system of parallel staves arranged one above another. Polyphonic (multivoiced) music was being composed for some 600 years before the score came into regular use in the 16th–17th centuries. Early examples of scores exist for works of the NOTRE-DAME SCHOOL, and early composers may have used temporary scores during composition, perhaps on chalkboards, from which the parts for individual singers were then copied.

Learn More About SCORE

Thesaurus: All synonyms and antonyms for "score"

Spanish Central Translation: "score" in Spanish

Britannica.com: Encyclopedia article about "score"

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Previous Word in the Dictionary: scordium

All Words Near: score

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